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**IN THE
COURT OF APPEALS OF INDIANA**

BRANDON GREGG,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 49A04-0611-CR-638
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William Robinette, Commissioner
Cause No. 49G03-0604-FC-74568

May 30, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

RILEY, Judge

STATEMENT OF THE CASE

Appellant-Defendant, Brandon Gregg (Gregg), appeals his convictions for Count I, attempted battery, a Class C felony, Ind. Code §§ 35-41-5-1, 35-42-2-1, and Count III and IV, intimidation, Class C felonies, I.C. § 35-45-2-1.

We affirm.

ISSUE

Gregg raises two issues on appeal, which we consolidate and restate as the following single issue: Whether the State presented sufficient evidence to sustain Gregg's convictions for attempted battery and two counts of intimidation.

FACTS AND PROCEDURAL HISTORY

Gregg and Laura Alstott (Alstott) have one son together. In July 2005, Alstott began dating Gerald Hudson (Hudson). Gregg and Hudson had a "hostile" relationship. (Transcript p. 32). On April 23, 2006, after a heated telephone conversation, Gregg and Hudson agreed to meet with the intent to settle their differences. Hudson was prepared for a physical altercation, but did not expect one of them to die.

Hudson arrived at the agreed upon location first. He was talking on a cell phone with Alstott when Gregg arrived over an hour later. Hudson stepped out of his car, while still on the phone with Alstott. Gregg exited the passenger side door of an S-10 Chevrolet pick-up truck. Upon exiting the pick-up truck, Gregg took a few steps and pulled a handgun out of his pants. Gregg told Hudson to "leave [his] family alone" and, while pacing in a half circle around Hudson, fired four shots from his gun. The bullets

struck Hudson's driver side backseat window, front windshield, and front bumper twice. After firing the four shots, Gregg returned to the truck and fired two more shots.

Dennis Myers (Myers), his wife, and their twelve-year-old daughter were across the parking lot preparing to go home when they witnessed the shooting. They were approximately fifty to sixty yards away from Gregg and Hudson. As the pick-up truck exited the parking lot, it drove by the Myers' vehicle. Gregg leaned his upper body out the window, pointed at the Myers' with his left hand, held the gun in this right hand, and said, "I'll fucking kill you next." (Tr. p. 103).

On April 26, 2006, the State filed an Information charging Gregg with Count I, attempted battery, a Class C felony, I.C. §§ 35-41-5-1, 35-42-2-1; Count II, intimidation, a Class C felony, I.C. § 35-45-2-1; Count III, intimidation, a Class C felony, I.C. § 35-45-2-1; Count IV, intimidation, a Class C felony, I.C. § 35-45-2-1; and Count V, carrying a handgun without a license, a Class A misdemeanor, I.C. § 35-47-2-1. The State later amended Count V to a Class C felony. September 28, 2006, a jury found Gregg guilty as charged. On October 6, 2006, the trial court sentenced Gregg to six years for each Count, with all sentences to run concurrently except the sentence for Count IV, intimidation, which was ordered to be served consecutive to the sentence for his attempted battery conviction, for a total executed sentence of twelve years.

Gregg now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Gregg argues the evidence presented by the State at trial was insufficient to support his convictions for attempted battery and two counts of intimidation.

Specifically, he claims the State failed to prove beyond a reasonable doubt that (1) he intended to shoot Hudson, and (2) he intended to dissuade the Myers from calling the police.

I. *Standard of Review*

Our standard of review for a sufficiency of the evidence claim is well settled. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. *White v. State*, 846 N.E.2d 1026, 1030 (Ind. Ct. App. 2006), *trans. denied*. We will consider only the evidence most favorable to the judgment, together with all reasonable and logical inferences to be drawn therefrom. *Id.* The conviction will be affirmed if there is substantial evidence of probative value to support the conviction of the trier of fact. *Id.* A judgment based on circumstantial evidence will be sustained if the circumstantial evidence alone supports a reasonable inference of guilt. *Id.*

II. *Attempted Battery*

Gregg first contends the State failed to prove beyond a reasonable doubt he intended to shoot Hudson. Conversely, the State maintains that shooting in Hudson's direction, the jury could reasonably infer he intended to shoot Hudson, or even if he did not intend to shoot Hudson, there was a high probability he would strike Hudson anyway.

To successfully prove attempted battery in the instant case, the State need only provide evidence of a high probability that the bullets fired by Gregg would touch Hudson. *See* I.C. §§ 35-41-5-1, 35-42-2-1; *see also Richeson v. State*, 704 N.E.2d 1008, 1010-11 (Ind. 1998). Our review of the record indicates that at or about eleven o'clock at

night, Gregg fired a gun four times, striking the vehicle next to where Hudson was standing. Gregg fired an additional two shots as he returned to the pick-up truck in which he arrived. And, on his way out of the parking lot exclaimed to the only witnesses, “I’ll fucking kill you next,” indicating at least the belief he had struck Hudson with one of the bullets he fired. (Tr. p. 103). This evidence provides a reasonable jury with ample grounds to conclude that Gregg attempted to batter Hudson. *See id.* at 1011. We therefore find that sufficient evidence supports Gregg’s attempted battery conviction.

III. *Intimidation*

Gregg also argues that because he did not intend to “inflict or threaten bodily injury” to the Myers, there was insufficient evidence to convict him of intimidation. (Appellant’s Br. p. 8).

Class C felony intimidation is defined as:

(a) A person who communicates a threat to another person, with the intent:

- (1) that the other person engage in conduct against the other persons’ will;
- (2) that the other person be placed in fear of retaliation for a prior lawful act; or
- (3) of causing:

(A) a dwelling, a building, or another structure; or

(B) a vehicle;

to be evacuated; commits intimidation, a Class A misdemeanor.

(b) However, the offense is a:

* * *

(2) Class C felony if, while committing it, the person draws or uses a deadly weapon.

I.C. § 35-45-2-1.

As evidenced by the statute, however, Gregg's intent to harm the Myers is not at issue. Rather, to be convicted of intimidation the State was required to prove beyond a reasonable doubt that Gregg communicated a threat to the Myers with the intent that they engage in conduct against their will. *See* I.C. § 35-45-2-1(a)(1). If the State further proved beyond a reasonable doubt he did so with a deadly weapon, Gregg committed Class C felony intimidation. *See* I.C. § 35-45-2-1(b)(2).

The record also shows that after realizing the Myers witnessed the events between Gregg and Hudson, Gregg leaned his upper body out the window of the pick-up truck as it drove out of the parking lot, pointed at the Myers' with his left hand, held a gun in this right hand, and said, "I'll fucking kill you next." (Tr. p. 103). Dennis did not move until Gregg left the parking lot, but then checked to make sure Hudson was not injured and called the police. This evidence provides a reasonable jury with ample grounds to conclude that Gregg intended to intimidate the Myers such that they would fear retaliation by him and not call the police. Thus, we find that sufficient evidence supports Gregg's intimidation of the Myers.

CONCLUSION

Based on the foregoing, we find the State presented sufficient evidence to sustain Gregg's convictions for attempted battery and two counts of intimidation.

Affirmed.

NAJAM, J., and BARNES, J., concur.